



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Jan Witold Baran, Esq.  
D. Mark Renaud, Esq.  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, D.C. 20006

SEP 13 2006

RE: MUR 5333  
WinterFox LLC  
WinterHawk Enterprises LLC  
Evan Bybee  
Dennis Gay

Dear Messrs. Baran and Renaud:

On September 5, 2006, the Federal Election Commission accepted the signed conciliation agreements and civil penalties submitted on behalf of WinterFox LLC and WinterHawk Enterprises LLC in settlement of violations of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Also on that date, the Commission determined to take no further action regarding Evan Bybee and Dennis Gay. Accordingly, the file has been closed in this matter as it pertains to WinterFox LLC, WinterHawk Enterprises LLC and Messrs. Bybee and Gay.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen  
Attorney

Enclosure  
Conciliation Agreements

27044165165

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 ) MUR 5333  
5 WinterFox LLC )  
6

7 **CONCILIATION AGREEMENT**

8  
9 This matter was generated by a complaint filed with the Federal Election Commission  
10 ("Commission") by Scott Clayton, as well as by information ascertained by the Commission in  
11 the normal course of carrying out its supervisory responsibilities. The Commission found reason  
12 to believe that WinterFox LLC ("WinterFox") violated 2 U.S.C. § 441a(a)(1)(A).<sup>1</sup>

13 NOW, THEREFORE, the Commission and WinterFox, having participated in informal  
14 methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as  
15 follows:

16 I. The Commission has jurisdiction over WinterFox and the subject matter of this  
17 proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
18 § 437g(a)(4)(A)(i).

19 II. WinterFox has had a reasonable opportunity to demonstrate that no action should  
20 be taken in this matter.

21 III. WinterFox enters voluntarily into this agreement with the Commission.

22 IV. The pertinent facts in this matter are as follows:

23 1. WinterFox is a limited liability company organized under the laws of the  
24 State of Utah. Nine individuals are members of WinterFox.

<sup>1</sup> The events that are the subject of this complaint occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations in this agreement pertain to those that were in effect prior to the implementation of BCRA.

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2006 AUG 16 P 3:42

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MUR 5333  
WinterFox LLC  
Conciliation Agreement  
Page 2

2. WinterFox elects to be treated as a partnership by the Internal Revenue Service and thus WinterFox's contributions are treated as contributions from a partnership pursuant to 11 C.F.R. § 110.1(e). 11 C.F.R. § 110.1(g)(2).

3. A contribution by a partnership shall be attributed to the partnership and to each partner, in one of two ways: 1) in proportion to his or her share of the profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or 2) by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and these partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. 11 C.F.R. § 110.1(e). A contribution by a partnership shall not exceed the Act's limitations on contributions. *Id.*

4. WinterFox is a "person" within the meaning of 2 U.S.C. § 431(11).

5. No person shall make contributions to any candidate and his authorized committees with respect to any election which exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A).

6. The John Swallow for Congress Committee ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and is an authorized committee of John Swallow within the meaning of 2 U.S.C. § 431(6).

7. WinterFox wrote a \$5,000 contribution check to the Committee dated March 28, 2002 in connection with the convention election. The contribution was attributed to the five individual members listed on the check in the amount of \$1,000 each. WinterFox's Certified Public Accountant has stated in a sworn affidavit that the accountants mistakenly

27044165167

MUR 5333  
WinterFox LLC  
Conciliation Agreement  
Page 3

1 allocated the political contribution solely as a draw to the capital of one of the individual  
2 members.

3 8. WinterFox wrote a \$5,000 contribution check to the Committee dated June 28,  
4 2002 in connection with the primary election. The contribution was attributed to the five  
5 individual members listed on the check in the amount of \$1,000 each. WinterFox's Certified  
6 Public Accountant has stated in a sworn affidavit that the accountants mistakenly allocated the  
7 political contribution solely as a draw to the capital of one of the individual members.

8 9. WinterFox has represented that the accounting errors set forth in  
9 Paragraphs IV.7 and IV.8 have been corrected in WinterFox's internal accounting and that the  
10 corrections were manifested on Federal tax returns filed on October 15, 2005.

11 10. WinterFox, by contributing \$5,000 to the Committee in connection with the  
12 convention election, and by contributing \$5,000 to the Committee in connection with the primary  
13 election, exceeded the statutory limit of \$1,000 per election.

14 V. 1. WinterFox LLC made excessive contributions to John Swallow for  
15 Congress in violation of 2 U.S.C. § 441a(a)(1)(A). WinterFox will cease and desist from  
16 violating 2 U.S.C. § 441a(a)(1)(A).

17 2. WinterFox contends that it did not knowingly and willfully violate the Act,  
18 and the Commission has not found that it did so.

19 VI. WinterFox will pay a civil penalty to the Federal Election Commission in the  
20 amount of Four Thousand Dollars (\$4,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

21 VII. WinterFox waives any and all claims it may have to the refund of the excessive  
22 contributions referenced in this agreement and will so notify the Committee.

27044165168

MUR 5333  
WinterFox LLC  
Conciliation Agreement  
Page 4

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. WinterFox shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, constitutes a final settlement as to WinterFox and its management and owners/partners, and no other statement, promise, or agreement, either written or oral, made

27044165169

MUR 5333  
WinterFox LLC  
Conciliation Agreement  
Page 5

1 by either party or by agents of either party, that is not contained in this written agreement shall be  
2 enforceable.

3 FOR THE COMMISSION:

4 Lawrence H. Norton  
5 General Counsel

6 BY: *Rhonda J. Vosdingh*  
7 Rhonda J. Vosdingh  
8 Associate General Counsel  
9 for Enforcement

*8/12/06*  
Date

10 FOR WINTERFOX LLC:

11 *JB*  
12 (Name)  
13 (Position) *Manager of WinterFox LLC*

*8-14-06*  
Date

27044165170

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 5333  
 WinterHawk Enterprises LLC )

**CONCILIATION AGREEMENT**

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Scott Clayton, as well as by information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that WinterHawk Enterprises LLC ("WinterHawk") violated 2 U.S.C. § 441a(a)(1)(A).<sup>1</sup>

NOW, THEREFORE, the Commission and WinterHawk, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over WinterHawk and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. WinterHawk has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. WinterHawk enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

<sup>1</sup> The events that are the subject of this complaint occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L 107-155, 116 Stat 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations in this agreement pertain to those that were in effect prior to the implementation of BCRA.

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MUR 5333  
WinterHawk Enterprises LLC  
Conciliation Agreement  
Page 2

1  
2 1. WinterHawk is a limited liability company organized under the laws of the  
3 State of Utah. Six individuals are members of WinterHawk.

4 2. WinterHawk elects to be treated as a partnership by the Internal Revenue  
5 Service and thus WinterHawk's contributions are treated as contributions from a partnership  
6 pursuant to 11 C.F.R. § 110.1(e). 11 C.F.R. § 110.1(g)(2).

7 3. A contribution by a partnership shall be attributed to the partnership and to  
8 each partner, in one of two ways: 1) in proportion to his or her share of the profits, according to  
9 instructions which shall be provided by the partnership to the political committee or candidate; or  
10 2) by agreement of the partners, as long as only the profits of the partners to whom the  
11 contribution is attributed are reduced (or losses increased), and these partners' profits are reduced  
12 (or losses increased) in proportion to the contribution attributed to each of them. 11 C.F.R.  
13 § 110.1(e). A contribution by a partnership shall not exceed the Act's limitations on  
14 contributions. *Id.*

15 4. WinterHawk is a "person" within the meaning of 2 U.S.C. § 431(11).

16 5. No person shall make contributions to any candidate and his authorized  
17 committees with respect to any election which exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A).

18 6. The John Swallow for Congress Committee ("the Committee") is a political  
19 committee within the meaning of 2 U.S.C. § 431(4) and is an authorized committee of John  
20 Swallow within the meaning of 2 U.S.C. § 431(6).

21 7. WinterHawk wrote a \$4,000 contribution check to the Committee dated  
22 March 29, 2002 in connection with the convention election. The contribution was attributed to

27044165172



MUR 5333  
WinterHawk Enterprises LLC  
Conciliation Agreement  
Page 3

1 the four individual members listed on the check in the amount of \$1,000 each. WinterHawk's  
2 Certified Public Accountant has stated in a sworn affidavit that the accountants mistakenly  
3 allocated the political contribution solely as a draw to the capital of one of the individual  
4 members.

5 8. WinterHawk wrote a \$5,000 contribution check to the Committee dated  
6 June 21, 2002 in connection with the general election. The contribution was attributed to the five  
7 individual members listed on the check in the amount of \$1,000 each. WinterHawk's Certified  
8 Public Accountant has stated in a sworn affidavit that the accountants mistakenly allocated the  
9 political contribution solely as a draw to the capital of one of the individual members.

10 9. Winterhawk has represented that the accounting errors set forth in  
11 Paragraphs IV.7 and IV.8 have been corrected in WinterHawk's internal accounting and that the  
12 corrections were manifested on Federal tax returns filed on October 15, 2005.

13 10. WinterHawk, by contributing \$4,000 to the Committee in connection with the  
14 convention election, and by contributing \$5,000 to the Committee in connection with the general  
15 election, exceeded the statutory limit of \$1,000 per election.

16 V. 1. WinterHawk Enterprises LLC made excessive contributions to John  
17 Swallow for Congress in violation of 2 U.S.C. § 441a(a)(1)(A). WinterHawk will cease and  
18 desist from violating 2 U.S.C. § 441a(a)(1)(A).

19 2. WinterHawk contends that it did not knowingly and willfully violate the  
20 Act, and the Commission has not found that it did so.

21 VI. WinterHawk will pay a civil penalty to the Federal Election Commission in the  
22 amount of Three Thousand Five Hundred Dollars (\$3,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

27044165173

MUR 5333  
WinterHawk Enterprises LLC  
Conciliation Agreement  
Page 4

VII. WinterHawk waives any and all claims it may have to the refund of the excessive contributions referenced in this agreement and will so notify the Committee.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. WinterHawk shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, constitutes a final settlement as to WinterHawk and its management and owners/partners, and no other statement, promise, or agreement, either written or oral, made

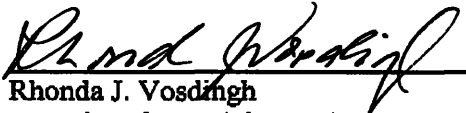
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MUR 5333  
WinterHawk Enterprises LLC  
Conciliation Agreement  
Page 5

1 by either party or by agents of either party, that is not contained in this written agreement shall be  
2 enforceable.

3 FOR THE COMMISSION:

4 Lawrence H. Norton  
5 General Counsel

6 BY:   
7 Rhonda J. Vosdangh  
8 Associate General Counsel  
9 for Enforcement

9/12/06  
Date

10 FOR WINTERHAWK ENTERPRISES LLC:

11   
12 (Name) Dennis Goss  
13 (Position) Manager

8-15-06  
Date

27044165175